

NO SUMMONS ISSUED

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Attorneys for Defendant,
American General Life Insurance Company

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ DEC 9 - 2011 ★

BROOKLYN OFFICE

11-6009

ALLEN STEIN, as Trustee of the RACHEL
MEISELS IRREVOCABLE TRUST 2006B,
Plaintiff,

v.

AMERICAN GENERAL LIFE INSURANCE
COMPANY,

Defendant.

: UNITED STATES DISTRICT COURT
: EASTERN DISTRICT OF NEW YORK

: Civil Action No.

: NOTICE OF REMOVAL OF A CIVIL
: ACTION

J. ORENSTEIN, M.J.

**TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

PLEASE TAKE NOTICE, that pursuant to 28 U.S.C. § 1446 (a), American General Life Insurance Company ("American General"), by and through their undersigned attorneys, Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, on this date hereby removes this Civil Action from the Supreme Court of the State of New York, County of Kings to the United States District Court, Eastern District of New York, together with all process, pleadings, and Orders, as required by 28 U.S.C. § 1446 (a), copies of which are attached hereto, and made part hereof respectfully shows:

1. On July 20, 2011, Plaintiff Allen Stein ("Stein"), as Trustee of the Rachel Meisels Irrevocable Trust 2006B, filed a civil action in the Supreme Court of the States of New York, County of Kings, bearing Index No. 500544/2011, entitled *Allen Stein, as Trustee of the Rachel*

Meisels Irrevocable Trust 2006B, Plaintiff v. American General Life Insurance Company, Defendant [See true and exact copies of the Summons and Complaint, filed July 20, 2011, annexed hereto as **Exhibit "A."**]

2. This Notice of Removal is timely filed within thirty (30) days after American General first received service of the Summons and Complaint. The Summons and Complaint were first served upon American General's counsel by Acknowledgment of Service executed on November 18, 2011. [See **Exhibit "B"**, Acknowledgment of Service.]

3. Plaintiff Stein alleges in his Complaint that American General's refusal to restore American General Flexible Premium Adjustable Life Insurance Policy U10032498L (the "Policy") insuring the life of Rachel Meisels in the amount of \$2.5 million, after the Policy lapsed for non-payment of premium violates the terms of the Policy and the law of the State of New Jersey. [See **Exhibit "A"**, page 2 and 3 of the Complaint.]

4. As a result of American General's alleged breach, Stein demands judgment against American General, declaring the Policy in the amount of \$2,500,000.00 is in full force and effect, plus costs and attorney's fees.

6. The District Court has diversity jurisdiction over this action under 28 U.S.C. §1332(a) in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00. Diversity Jurisdiction is proper in this action because:

a. Plaintiff alleges that Stein is a citizen of the State of New York, Kings County.

[See **Exhibit "A"**, page 1 of the Complaint.]

- b. Plaintiff alleges that The Rachel Meisels Irrevocable Trust 2006 B (the "Trust") is a trust created under the laws of the State of New York, with a situs in Hawthorn, New Jersey. [See **Exhibit "A"**, page 1 of the Complaint.]
- b. At all times material hereto, and continuing to the present, Defendant American General is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Texas.
- c. The amount in controversy between the parties in this matter exceeds \$75,000.00, exclusive of interest and costs, as Plaintiff seeks restoration of a life insurance policy in the amount of \$2,500,000.00, plus attorney's fees.

7. As jurisdiction over the subject matter of this action is conferred on this Court by 28 U.S.C. §1332, this action may be removed to this Court by American General pursuant to 28 U.S.C. § 1441(a).

9. American General does not waive any objections, exceptions, or defenses to Plaintiff's Complaint.

10. Upon filing the within Notice of Removal in the office of the Clerk of the United States District Court, Eastern District of New York, American General also filed copies of this Notice with the Clerk of the Supreme Court of the State of New York, County of Kings, to effect removal of this action to the United States District Court pursuant to 28 U.S.C. § 1441 and U.S.C. § 1446(d). (A true and exact copy of the Notice filed with the Supreme Court of the State of New York, County of Kings is annexed hereto as **Exhibit "C"**).

WHEREFORE, American General prays that given that the statutory requirements have been met, that the above-captioned action now pending in Supreme Court of the State of New York, County of Kings, be removed therefrom to this Court.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP
Attorneys for Defendant,
American General Life Insurance Company

By: 

Robert P. Lesko

Dated: December 8, 2011

CERTIFICATE OF SERVICE

I hereby certify that on behalf of the defendant, American General Life Insurance Company, I caused the within Notice of Removal and Exhibits to be delivered via Overnight Delivery on this date to:

Clerk
United States District Court
Eastern District of New York
Brooklyn, New York
225 Cadman Plaza East
Brooklyn, New York 11201

Cheryl D. Lipsius, Esq.
Lipsius-BenHaim Law
14 Penn Plaza
Suite 500
New York, New York 10122
Attorneys for Plaintiff

I further certify that on behalf of defendant, American General Life Insurance Company, I caused the within Notice of Removal and Exhibits to be delivered via overnight for Hand Delivery on this date to:

County Clerk, Kings County
Supreme Court of the State of New York
Kings County Courthouse
360 Adams Street
Brooklyn, New York 11201

I further certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: _____

Maria Sisti
Maria Sisti

Dated: December 8, 2011

LED: KINGS COUNTY CLERK - PENDING

NYSCEF DOC. NO. 1

INDEX NO. UNASSIGNED

RECEIVED NYSCEF: 07/20/2011

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

ALLEN STEIN as Trustee of the Rachel Meisels
Irrevocable Trust 2006 B,

Plaintiff,

vs.

AMERICAN GENERAL LIFE INSURANCE
COMPANY,

Defendant.

Date Filed: _____

Index No. 500544 /2011

Plaintiff designates Kings
County as the place of trial

The Basis of Venue is
Plaintiff's Residence

SUMMONS

Plaintiff resides at

County of Kings

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the date of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
July 20, 2011

SCHINDEL, FARMAN, LIPSIOUS,
GARDNER & RABINOVICH LLP
Attorneys for Plaintiff

By: _____

Cheryl D. Lipsius
Ira S. Lipsius, Esq.
Cheryl D. Lipsius, Esq.
14 Penn Plaza, Suite 500
New York, New York 10122
(212) 563-1710

Defendant's address:
American General Life Insurance Company
2727-A Allen Parkway
Houston, TX 77019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ALLEN STEIN AS TRUSTEE OF THE RACHEL
MEISELS IRREVOCABLE TRUST 2006 B,

Plaintiff,

v.

AMERICAN GENERAL LIFE INSURANCE
COMPANY,

Defendant.

Index No.:

COMPLAINT

Plaintiff, Allen Stein as Trustee (the "Trustee") of the Rachel Meisels Irrevocable Trust 2006 B (the "Trust"), by his attorneys, Schindel, Farman, Lipsius, Gardner & Rabinovich LLP, for his complaint states:

1. The Trust, is a trust created under the laws of the State of New York, with a situs in Hawthorn, New Jersey, wherein Rachel Meisels is Grantor and Allen Stein is Trustee.
2. The Trustee is an individual serving as Trustee of the Trust and residing in the State of New York, County of Kings.
3. Defendant, American General Life Insurance Company ("American General"), at all times relevant was and is a life insurance company authorized to conduct business in the State of New York with its home office located at 2727-A Allen Parkway, Houston, Texas, 77019.
4. On or about April 17, 2006, American General issued insurance policy number U10032498L (the "Policy") insuring the life of Rachel Meisels for \$2.5 million.
5. On or about July 20, 2011, American General sent a letter to the Trust stating that the Policy lapsed for non-payment of premium.

6. New Jersey statutes and regulations require American General to send a notice to the Trust prior to terminating the Policy for non-payment of premium ("Grace Notice").

7. The Policy requires American General to send a Grace Notice to the Trust prior to terminating the Policy for non-payment of premium.

8. American General did not send a Grace Notice to the Trust prior to terminating the Policy for non-payment of premium.

9. The Policy requires American General to provide the Trust with a sixty-one day grace period prior to terminating the Policy for non-payment of premium.

10. American General did not provide the Trust with a sixty-one day grace period prior to terminating the Policy for non-payment of premium.

11. American General did not send a Grace Notice to the Trust providing the Trust with a sixty-one day grace period prior to terminating the Policy for non-payment of premium.

12. New Jersey statute provides that "[p]ayment of the overdue premium shall be effected on the date of mailing of the payment by the policyholder and may be made at any time during the grace period."

13. New Jersey statute provides that "[t]he grace period provision shall not require receipt of the premium by the insurer within the grace period. The policyholder shall have the entire period within which to remit payment."

14. American General did not allow the Trust to mail the premium at any time during the grace period.

15. Under applicable statute, case law, and the terms of the Policy, American General's attempt to cancel the Policy is unlawful.

16. The Trustee is prepared to pay any outstanding premiums on the Policy and hereby makes constructive payment of any outstanding premiums on the Policy.

17. American General has refused to restore the Policy.

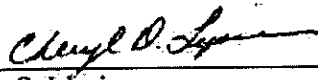
18. By reason of the foregoing, Plaintiff is entitled to judgment declaring that the Policy has not lapsed and is in full force and effect.

19. No claim has been made under the Policy, as the insured person, Rachel Meisels, is alive.

WHEREFORE, Plaintiff demands judgment of this Court against American General, declaring that the Policy is in full force and effect, and awarding Plaintiff's costs of suit, attorneys' fees, and such other relief as the Court may deem proper and just.

Dated: New York, New York
July 20, 2011

SCHINDEL, FARMAN, LIPSIOUS,
GARDNER & RABINOVICH LLP
Attorney for Plaintiff

By: 
Ira S. Lipsius
Cheryl D. Lipsius
14 Penn Plaza, Suite 500
New York, New York 10122
212-563-1710
File No.: 4324.0001

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

-----X
ALLEN STEIN, as Trustee of the Rachel Meisels
Irrevocable Trust 2006B

Plaintiff(s)/Petitioner(s),

Index No: 500544/2011

- against -

AMERICAN GENERAL LIFE INSURANCE CO.

Defendant(s)/Respondent(s).

-----X

**NOTICE REGARDING AVAILABILITY OF ELECTRONIC FILING
SUPREME COURT CASES**

PLEASE TAKE NOTICE that plaintiff(s)/petitioner(s) [defendant(s)/respondent(s)] in the case captioned above intends that this matter proceed as an electronically-filed case in the New York State Courts Electronic Filing System ("NYSCEF") in accordance with the procedures therefor, set forth in Uniform Rule 202.5-b and described below. Under that Rule, filing and service of papers by electronic means cannot be made by a party nor can electronic service be made upon a party unless that party has consented to use of the System for the case in question. Within ten days after service of this Notice, each party served should indicate whether or not it consents to electronic filing and service through NYSCEF for this case. (See Instruction # 2 below.)

General Information

Electronic filing offers significant benefits for attorneys and litigants, permitting documents to be filed with the County Clerk and the court and served, between or among consenting parties, by posting the documents on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. There is no fee to use the NYSCEF System, whether for filing, service, or consultation of the electronic docket, nor is there a charge to print documents from the docket. Normal filing fees must be paid, but this can be done by credit or debit card on-line. For additional procedures and information, see Uniform Rule 202.5-b, any e-filing protocol that may have been promulgated by the court in question, and the NYSCEF Website at www.nycourts.gov/efile.

Instructions

1. Service of this Notice constitutes consent to e-filing and a statement of intent by the undersigned to use the NYSCEF System in this case. When an action or proceeding is being commenced through the NYSCEF System, this Notice must accompany service of the initiating papers.
2. Within ten days after service of this Notice, the party served should consent to e-filing either: (i) by filing with the court and serving on all parties of record a consent to e-filing, or (ii) if the party or attorney of record is an authorized e-filing user, by filing the consent electronically in the manner provided at the NYSCEF site. If one party or some but fewer than all parties consent, NYSCEF may be used by and between or among consenting parties.
3. Each participating attorney, unless already registered, or self-represented party must **PROMPTLY** complete a Filing User Registration form (see the "Forms" section of the Website) and submit it to the NYSCEF Resource Center (efile@courts.state.ny.us) in order to obtain the confidential Filing User Identification Number and Password necessary to use the system.
4. For additional information about NYSCEF, see the *User's Manual* and *Frequently Asked Questions* on the Website, or contact the court in question or the NYSCEF Resource Center (at 646-386-3033 or efile@courts.state.ny.us).

Dated: October 28, 2011

Cheryl D. Lipsius, Esq. (Name)

Lipsius-BenHaim Law (Firm)

14 Penn Plaza, Ste 500 (Address)
New York, NY 10122

212-981-8440 (Phone)

212-695-6602 (Fax)

(E-Mail)

Attorney(s) for Plaintiff

4/14/11

B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
ALLEN STEIN as Trustee of The Rachel Meisels
Irrevocable Trust 2006 B,

Index No.: 500544/2011

Plaintiff,

-against-

AMERICAN GENERAL LIFE INSURANCE
COMPANY,

**ACKNOWLEDGMENT
OF SERVICE**

Defendant.
-----X

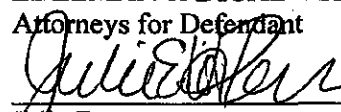
Defendant, American General Life Insurance Company, hereby acknowledges receipt of
a copy of the summons and complaint in the above captioned matter via email to its attorneys
Wilson Elser Moskowitz Edelman & Dicker LLP.

Dated: November

18, 2010
2011

WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP
Attorneys for Defendant

By:


Julie E. Von Bevern
200 Campus Drive
Florham Park, NJ 07932
973-624-0800

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ALLEN STEIN, as Trustee of the RACHEL
MEISELS IRREVOCABLE TRUST 2006B,
Plaintiff,

v.

AMERICAN GENERAL LIFE INSURANCE
COMPANY,

Defendant.

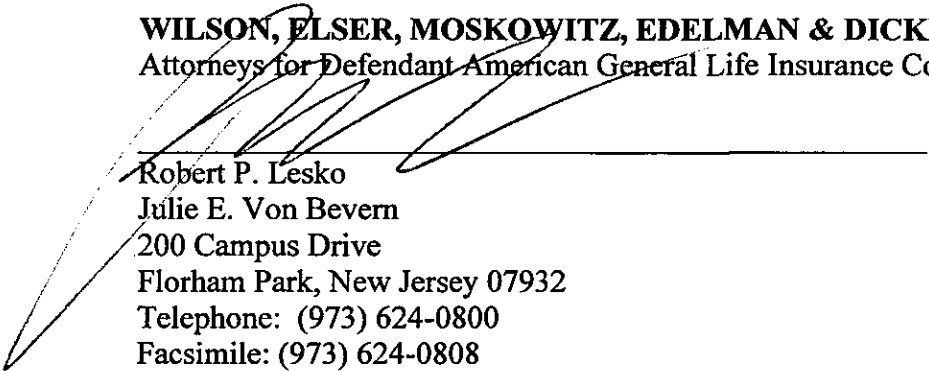
INDEX NO.: 500544/2011

**NOTICE OF FILING OF
NOTICE OF REMOVAL**

**TO: THE CLERK OF THE SUPREME COURT OF THE STATE OF NEW
YORK, COUNTY OF KINGS**

NOTICE IS HEREBY GIVEN that defendant American General Life Insurance Company ("American General"), by and through its undersigned attorneys Wilson, Elser, Moskowitz, Edelman & Dicker, LLP and pursuant to 28 U.S.C. 1446(b), on this date filed a Notice of Removal of this action from the Supreme Court of the State of New York, County of Kings to the United States District Court for the Eastern District of New York, together with all process, pleadings, and Orders, as required by 28 U.S.C. § 1446(a), a copy of which is attached hereto, and made part hereof. Accordingly, American General hereby files this Notice and Petition with the Clerk of the Supreme Court of the State of New York, County of Kings pursuant to 28 U.S.C. § 1446. Pursuant to 28 U.S.C. § 1446(d) this Court should proceed no further unless and until the case is remanded, and should transmit all the papers filed in the above action to the Clerk of the Court, United States District Court for the Eastern District of New York.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP
Attorneys for Defendant American General Life Insurance Company



Robert P. Lesko
Julie E. Von Bevern
200 Campus Drive
Florham Park, New Jersey 07932
Telephone: (973) 624-0800
Facsimile: (973) 624-0808

Dated: December 8, 2011